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10/058,087	01/29/2002	Haruko Toyoshima	0445-0315P	2505
2292 7590 03/21/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER REICHLE, KARIN M				
ART UNIT		PAPER NUMBER		
3761				
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/058,087

Applicant(s)

TOYOSHIMA, HARUKO

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 7/07 and 12/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Response to Amendment

1. The following action is based on the amendments to the claims filed 7-07 and 12-17-07.

Specification

2. The disclosure is objected to because of the following informalities: Claim 4 now claims the under waist elastic members being disposed in a area that is nearer to a middle of a width direction of the diaper than the respective ends of said pair of side portions with leg elastic members located in the portions of the diaper having the fastening tapes. While the originally filed application describes the ends of elastic members 9 being at the respective side edges of the main body which edges are also provided with the tapes, it is not clear whether what is being claimed is the same. Therefore, at the very least, a clear, consistent description of the invention whose full scope is supported by the originally filed specification should be set forth throughout the application. It is suggested that the second to last line of claim 4 be rewritten as --ends of leg elastic members of said pair of side portions located in portions of the diaper having--.

Appropriate correction is required.

Claim Language Interpretation

3. Claim 1 now requires the waist opening portion being provided with a continuous waist elastic member arranged in an extended state in a width direction of the diaper. It is still

noted that claim 1 does not require the elastic members be stretched from a nonstretched state to a extended state and then fixed to the areas in the extended state and then released from such state allowing contraction to the nonstretched state. The fixing of a temporarily or permanently stretched material to the areas and the areas being able to contract due to the disposition of such stretched material only is required. It is further noted that the claims still do not require the under-waist portion positioned right below the waist opening portion and the areas extending outwardly from the absorbent be one and the same, i.e. coextensive, or the under-waist elastic members only being in the under-waist portion or being coextensive therewith. Finally it is noted that while the waist opening portion requires a continuous waist elastic member, such member is still not required to be continuous with the entire waist portion, i.e. the member is continuous in some portion of the waist opening portion (Note the original filed Figures show a continuous elastic member in each of the front and rear portions of the waist opening portion, but such member does not span the entire front or rear portion, i.e. does not extend side edge to side edge in such portions). The elastic member of the waist portion is now required to be provided along the central extent of the waist portions and extend continuously above at least a portion of the under waist portion elastic members, and thereby at least a portion of the under waist portion, and the under waist portion, i.e. at least a portion, is also required to be right below the waist opening portion. These comments also apply to similar language in claims 5-8. (It is noted that the language of claim 1, i.e. “being positioned right below”, and that of claim 5, i.e. “positioned directly below” appear to be the same as “right” as defined by the dictionary is “in direct line or course directly, straight” and “direct” is defined as “to extend or project in a specified line or course”.) All the claims require the fastening tapes be directly attached to the under-waist

portion. However this does not require that the tapes are directly attached to the elastic members thereof. Nor do the claims require the entire waist opening portion have an extension stress less than that or those of the entire under-waist portion. In addition, claim 1 at a minimum requires non-monolithically formed and not touching waist opening and under-waist elastic members, elastic members in the areas outside the absorbent member but not where a portion thereof exists at a middle portion of the underwaist portion which are fixed in such areas so as to manifest contractibility (Note MPEP 2113 with regard to lines 16-19 of claim 1 and similar language in claim 5, i.e. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process), and the under-waist portion having a greater extension stress than at least some portion of the waist opening portion. Additionally claim 1 is considered to include at a minimum a sheet which is part of a cuff and elastic members in a pair of side portions, and claim 4, due to the lack of clarity discussed supra, as well as claim 8 are considered to include the under waist elastic members being disposed in an area closer to the longitudinal centerline of the diaper than ends of leg elastic members located in portions of the diaper having the fastening tapes, e.g. the respective side portions of the diaper.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-2, and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Clear et al '783, and thereby Buell et al '092.

Claim 1: See '783 at Figure 2, i.e. topsheet 24, backsheet 22, core 28, side edges 62, fastening tapes 92, landing zone 44, longer side portions, adjacent 62, e.g. 103, upright cuffs 84, leg elastic members 104, a waist opening portion is at least a portion of waist edge 64, waist elastic member 76, under-waist portion is at least a portion of 72, 30, 150 which portion includes at least a plurality of elastic members, e.g. 154, and which portion is additionally directly attached to at least a portion of tape 92. See also col. 3, lines 23-39, col. 7, lines 26-col. 9, line 44, col. 10, line 4-col. 12, line 65, esp. col. 11, lines 27-31 and col. 12, line 19 and the paragraph bridging pages cols. 14-15 of '783 and thus, by incorporation, Buell '092 at, e.g., col. 35, line 61-col. 36, line 35, especially col. 36, lines 6-10, col. 51, lines 4-65, esp. lines 54-65, Figure 1, col. 46, lines 17-34, col. 15, lines 16-27, col. 23, lines 15 et seq, col. 33, lines 54-56, col. 42, lines 49-64, col. 43, lines 19-44. Note the elastic members, e.g., 154 can be associated with the topsheet and backsheet in the tensioned condition, i.e. stretched state, and thereby are also fixed, i.e. at least indirectly, between a sheet forming the cuff and the backsheet, see 152 with respect to 84-86 in Figure 1 of '783. It is also noted that 1N is about 150 gf. With regard to the limitations of claim 1 not already addressed supra, see Claim Language Interpretation section supra and the discussion of references supra, i.e. '783 and '092 include at a minimum non-monolithically formed waist opening and under-waist elastic members, i.e. elements 34 and 154 and/or 90 which are separate and don't touch, the elements 154 and/or 90 are arranged in an extended state, elastic members of the under-waist portion in the areas outside the absorbent member but not a portion thereof/the middle area of the underwaist portion which are fixed in such areas so as to

manifest contractibility, waist portion elastic member 76 in an extended state in a width direction at least along the central extent of the waist portion and continuously above at least a portion of the underwaist elastic members, e.g. 154, and thereby the underwaist portion positioned right below the waist opening portions, the under-waist portion having a greater extension stress than at least some portion of the waist opening portion, and no elastic members oriented in a width direction arranged in a width direction of said diaper in a portion of the diaper extending between the crotch portion and the second waist opening portion adjacent 35.

Claim 2: See col. 9, lines 22-24 of '783.

Claims 5-7: See the discussion of claims 1 and 2 supra.

Claim Rejections - 35 USC § 102/103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 4 and 8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Clear et al '783, and thereby Buell et al '092 and Lawson '278.

With regard to claims 4 and 8, see the discussion in paragraphs 2-3 supra and see col. 7, lines 27-54, the paragraph bridging cols. 13-14 of '584, and thereby by incorporation, '278 at, e.g., the Figures, especially Figures 3-4 and Figure 7, and col. 8, lines 5-13 and 44-58, the paragraph bridging cols. 10-11 and col. 11, lines 45-51, and the Figures of '783, especially elements 32, 103, 104, 85 and 86. Therefore '783 is considered to teach or obviously teach the elastics disposed along an inwardly curved line, as best understood, because when the cuff

elastics shown in the stretched state are allowed to contract, the diaper forms U-shape and the elastics are disposed along such U-shape which is an inwardly curved line and teach the location of the elastic members, as best understood, because an elastic member 77 as taught '278 can be situated adjacent the attached end of the upstanding portion of the cuff, i.e. the edge of 85 laterally outwardly of 86 as shown by '7783, whereby the ends thereof which are disposed in longitudinal side portions of the diaper which side portions are also provided with the fastening tapes are also disposed further outward relative to the middle of the width direction than the inwardmost lateral edge of 150. The prior art also teaches elastic members 104 which or obviously which are disposed along a curve and have ends which are located as claimed as best understood.

Response to Arguments

8. Applicant's remarks have been considered. Such remarks are either considered moot in that they address matters which have not been reraised or are deemed not persuasive for the reasons set forth supra. The communication regarding the Korean Patent Application filed 10-07 has been received in the application and considered.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by 7/07 and 12/07 amendments to the claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Karin M. Reichle/
Primary Examiner, Art Unit 3761

March 13, 2008